

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

DOCKET NO. 2000-210-W/S - ORDER NO. 2004-254

MAY 19, 2004

IN RE: Application of United Utility Companies, Inc.	)	ORDER ON REMAND
for Approval of an Increase in its Water and	)	
Sewer Services Provided to all of its Service	)	
Areas in South Carolina.	)	

This matter is before the Public Service Commission of South Carolina (the “Commission”) pursuant to the April 8, 2004, and April 19, 2004, orders of the Richland County Court of Common Pleas remanding this case to the Commission to give effect to settlements reached by the parties in Civil Action Nos. 2002-CP-40-5494 and 2002-CP-40-5793. These civil actions involved the petitions for judicial review of Commission Order Nos. 2002-214 and 2002-751 in the instant docket filed by United Utility Companies, Inc. (“UUC” or “Company”) and the Consumer Advocate pursuant to S.C. Code Ann. §§ 1-23-380 (Supp. 2003) and 58-5-340 (1976). Based upon the parties’ settlements, as set forth in their written Stipulations filed with the Commission, we issue the within order.

**FINDINGS OF FACT**

1. A fair return on equity for the Company is 10%.
2. Utilizing the capital structure of Utilities, Inc. at December 31, 2000, of 50.09% long-term debt and 49.91% equity, the cost of debt of Utilities, Inc. at December

31, 2000, of 8.62%, and a return on equity of 10% produces a rate of return on rate base of 9.31%.

3. By its Application, UUC sought an increase in its rates and charges for water and sewer service which would result in \$294,752 of additional revenues to UUC.

4. The appropriate operating revenues for UUC for the test year under the rates approved by the Commission in prior dockets and after accounting and pro forma adjustments are \$362,994.

5. The appropriate operating expenses for UUC for the test year under the rates approved by the Commission in prior dockets and after accounting and pro forma adjustments for known and measurable out-of-test-year occurrences are \$415,653.

6. The appropriate rate base for UUC for the test year after accounting and pro forma adjustments and adjustments for known and measurable occurrences outside the test year is \$990,150.

7. A customer growth adjustment using the method for calculating the customer growth as proposed by the Staff is appropriately included in computing the income requirements of UUC.

8. The income requirement for UUC, using the return on rate base of 9.31% found appropriate in this Order, and the adjusted rate base of \$990,150, is \$593,066.

9. In order for UUC to have the opportunity to earn its income requirement of \$593,066, UUC must be allowed additional revenues totaling \$234,748.

10. In designing rates for UUC, the Commission finds it appropriate to reduce the monthly sewer charges currently in effect under bond, as permitted under S.C. Code

Ann. § 58-5-240(D) (Supp. 2003) and approved in Commission Order No. 2002-494 in the instant docket, such that the monthly sewer charges going forward shall be as set forth in Appendix “A” hereto.

11. The appropriate operating margin for UUC, based upon the adjustments and rates approved herein is 8.34%.

### **EVIDENCE SUPPORTING FINDINGS OF FACT**

The foregoing findings of fact are supported, first and foremost, by the settlement agreements reached by the parties in the appeals from the Commission’s prior orders in this docket. Thereunder, a return on equity at the bottom of the range testified to by Staff witness Dr. Spearman, which is 10%, is adopted. Further, an adjustment proposed to test year expenses by the Company to include \$2,760 in operator salary for a vacant position filled after the test year, but before the application was filed, is adopted. Similarly, an adjustment proposed to test year expenses to include \$35,225 in rate case expenses incurred after the time Staff completed its audit, but up to and through the hearing date, in addition to the \$4,314 approved in Order No. 2002-214, is adopted. Also, \$34,960 in adjustments to test year expenses proposed by Consumer Advocate witness Bleiweis for “expense variances” are adopted. Moreover, although the evidence of record may also support different factual conclusions than those resulting from the parties’ settlements, each of the findings of fact is supported by substantial, reliable and probative evidence of record in this case consisting of the testimony of the witnesses and other evidence recounted in Order Nos. 2002-214 and 2002-751.

### **CONCLUSIONS OF LAW**

The parties have settled their appeals and are bound by those settlements in this remand proceeding. *Harris-Jenkins v. Nissan Car Mart, Inc.*, 348 S.C. 171, 557 S.E.2d 708 (Ct. App. 2001) (holding that settlement agreements are viewed as contracts between the parties which cannot be repudiated absent fraud). Further, the fact that the parties have agreed upon the adoption of the foregoing merely confirms that the settlements are in the public interest since it balances the interests of the Company and its customers and fulfills the obligation of the Commission to set just and reasonable rates. Finally, although the parties have agreed to a settlement of their appeals by way of the foregoing, they have also agreed that the findings and conclusions set forth herein shall not be deemed to constitute precedent for purposes of any other case which may come before the Commission in the future, including a case involving these parties. This, too, is consistent with South Carolina law since a departure from any precedent which could be claimed to exist by virtue of the within order would not be arbitrary. *Cf. 330 Concord Street Neighborhood Ass'n v. Campsen*, 309 S.C. 514, 424 S.E.2d 538 (Ct. App. 1992). And, as already noted above, these findings of fact are supported by substantial evidence of record.

### **REFUND**

As a result of the foregoing, a refund is due from UUC to its customers who have received and been billed for sewer service at the rates placed into effect under bond pursuant to Order No. 2002-494. See S.C. Code Ann. § 58-5-240(D). The current principal amount of this refund is \$21,446.34, which reflects the total difference between

the amount collected by the Company under bond pursuant to Order No. 2002-294 through the end of May, 2004, and the amount the Company would have been entitled to collect for that same period at the rates set pursuant to this order. The Company shall make a refund of this amount, plus (a) additional principal of \$1,007.58 per month for any month after May, 2004, in which the Company continues to collect the rates placed into effect under bond and (b) interest at the statutory rate of twelve percent (12%) per annum, on a pro rata basis to customers who have paid the monthly sewer rates that were placed into effect under bond. Interest is to be calculated for the period from and as of the date the rates under bond were placed into effect pursuant to Order No. 2002-294 to the date on which the Company places into effect the rates approved hereby. The Company shall accomplish this refund by way of bill credits on bills issued in the next billing cycle immediately following the issuance of this order in which the Company is able to make the necessary arrangements for modification of the bills. Where a refund is due a former customer of the Company whose forwarding address is known to the Company, a check in the amount of the refund due such customer shall be issued by the Company and forwarded to that address. Upon completion of the refund process described hereinabove, the Company shall certify to the Commission the total amount due to be refunded and the amount actually refunded. To the extent that the Company has no forwarding address for a former customer or the forwarding address proves to be no longer valid, the Company shall so advise the Commission and a determination of the disposition of any undistributed amount of the refund ordered hereunder shall be made by the Commission upon notice to the parties.

IT IS THEREFORE ORDERED THAT:

1. UUC is granted a rate of return on rate base for its water and sewer operations in South Carolina of 9.31%.

2. The schedule of rates and charges attached hereto as Appendix A is hereby approved for service rendered on or after the date of this Order. Further, the schedules are deemed to be filed with the Commission pursuant to S.C. Code Ann. § 58-5-240 (Supp. 2003).

3. Should the schedules approved herein and attached hereto as Appendix A not be placed in effect until three (3) months from the effective date of this Order, the rates and charges authorized under these schedules shall not be imposed without the written permission of the Commission.

4. UUC shall effect a refund to its customers in the amount of \$21,446.34, plus additional principal and interest, in accordance with the terms and conditions stated hereinabove.

5. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/  
Mignon L. Clyburn, Chairman

ATTEST:

/s/  
Bruce F. Duke, Executive Director

(SEAL)